91-1661

(2)

Supreme Court, U.S.
FILED
APR 10 1992
OFFICE OF THE CLERK

CASE NO.

SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1991

PAUL FERRIS
PETITIONER

v.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF MESA, STATE OF COLORADO; RICHARD C. POND IN HIS CAPACITY AS MEMBER OF SAID BOARD AND INDIVIDUALLY; MAXINE ALBERS AND R. W. HOLMES IN THEIR RESPECTIVE CAPACITIES AS MEMBERS OF SAID BOARD AND INDIVIDUALLY.
RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE COLORADO COURT OF APPEALS, DIVISION III.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Paul Ferris
840 23 Road
Grand Junction, Colorado 81505
Telephone: (303) 243-3115

March 1992.

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COLORADO COURT OF APPEALS
No. 89CA2137

PAUL FERRIS,
Plaintiff-Petitioner
Appellant,
v.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF MESA, STATE OF COLORADO; Richard C. Pond, in his capacity as member of said Board and individually; Maxine Albers and R.W. Holmes in their respective capacities as members of said Board and individually,
Defendants-Respondents-Appellees.

Appeal from the District Court of Mesa County
No. 89CV204
Honorable David A. Bottger, Judge
JUDGMENT AFFIRMED
Dated: April 25th, 1991

DIVISION III
Opinion by JUDGE TURSI
Criswell and Plank, JJ., concur

Paul Ferris, Pro Se

Younge & Hockensmith, P.C.
Mark R. Luff
Earl G. Rhodes
Grand Junction, Colorado
Mesa County Attorney's Office
Maurice Lyle Dechant
Alan N. Hassler
Grand Junction, Colorado
Attorneys for Defendants-Respondents-Appellees

[1]Plaintiff, Paul Ferris (taxpayer), appeals the trial court's judgment dismissing

his complaint for declaratory and injunctive relief against defendants, the Board of County Commissioners of the County of Mesa, and the commissioners in their individual capacities (commissioners). We affirm.

The facts are not in dispute. In late 1988, the commissioners sought to raise property taxes by imposing a mill levy in excess of the property tax revenue increase limitation. See generally Sec. 29-1-301, C.R.S.(1986 Repl. Vol. 12A). In order to do so the commissioners were required to invoke and satisfy the "truth in taxation" procedure, which mandates adherence to certain notification and hearing requirements. See Colo. Sess. Laws 1987, chs. 226 and 227, Sec.29-1-303, at 1185, 1187.

At the conclusion of the "truth in taxation" procedure, the commissioners adopted a resolution approving imposition of a mill levy in excess of the statutory limitation.

Taxpayer then filed his complaint with the district court, seeking a judicial determination that the commissioners: (1) implemented the improper procedure to increase taxes, (2) failed to comply with the mandatory statutory notification and hearing procedures, and (3) violated Sec.24-6-401, C.R.S. (1988 Repl. Vol. 10A), the Open Meetings Law. He additionally sought an order enjoining the County from collecting and spending the tax revenues gained by the mill levy increase.

The commissioners moved to dismiss taxpayer's complaint,asserting that he had failed to exhaust his administrative remedies. The commissioners alternatively asserted that they had followed all proper statutory procedures.

[2]After conducting a hearing to consider taxpayer's motion for preliminary injunction, the trial court entered its oral findings and concluded that taxpayer had fail-

ed to exhaust the applicable administrative procedures and remedies. The court also found relative to the requested injunctive relief that taxpayer did not fulfill his burden of proving the likelihood of prevailing on the merits or demonstrating irreparable harm.

Accordingly, taxpayer's motion for injunctive relief was denied, and the trial court ordered that taxpayer was precluded from seeking judicial review. The complaint was dismissed, and a motion to reconsider was subsequently denied by written order.

I.

As a preliminary matter, the commissioners assert that our review is confined to the trial court's written order denying Ferris' motion for reconsideration because it constitutes the only final order entered for purposes of appeal. We disagree.

A trial court is not required to enter

written findings of fact and conclusions of law in support of decisions on motions to dismiss and motions for summary judgment. C.R.C.P. 52. Moreover, oral findings may be entered in the record in support of the trial court's judgment, Mowry v. Jackson, 140 Colo. 197, 343 P.2d 833 (1959), so long as we are able to determine the basis of the trial court's decision upon review. People v. [3]Abbot, 638 P.2d 781 (Colo. 1981); Ray v. City of Brush, 152 Colo. 428, 383 P.2d 478 (1963).

Here, the legal effect of the trial court's detailed oral findings and order disposed of the entire claim for relief. See Levine v. Empire Savings & Loan Ass'n, 192 Colo. 188, 557 P.2d 386 (1976); Wilbourn v. Hagan, 716 P.2d 485 (Colo. App. 1986). And, since final judgment was otherwise properly entered and certified, we may consider all of Ferris' contentions on appeal. See Wesson v. Bowling, 199 Colo.

30, 604 P.2d 23 (1979).

II.

Taxpayer contends that the trial court erred in dismissing his request for declaratory relief on the jurisdictional ground that he had failed to exhaust administrative remedies as a prerequisite to judicial review. We disagree.

A.

The thrust of taxpayer's dispute is that the commissioners imposed an excess mill levy in contravention of statutory procedural requirements. Taxpayer contends that because his challenge of wrongful governmental conduct is neither contemplated nor remedied by the statutory administrative framework, he is not required to exhaust inadequate administrative remedies as a prerequisite to invoking declaratory relief.

Sections 39-1-113 and 39-1-114, C.R.S., (1982 Repl. Vol. 16B) permit taxpayers to

abate or recoup taxed "that have been erroneously or illegally levied by action of the county [4]commissioners." Board of Assessment Appeals v. Benbrook, 735 P.2d 860 (Colo. 1987) (emphasis supplied).

Specifically, these administrative remedies provide that erroneously or illegally levied taxed shall be abated or refunded, "whether due to erroneous valuation for assessment, irregularity in levying, or clerical error." See Colo. Sess. Laws 1988, ch. 268, Sec. 39-10-114 at 1290 (emphasis supplied). An application and hearing process must be followed before a taxpayer is entitled to receive the remedial abatement or refund. See Colo. Sess. Laws 1988, ch. 268, Sec. 39-1-113 at 1290 & 1294.

Our supreme court has held that the abatement and refund provisions apply when a taxpayer seeks to obtain relief:

"from an error in assessment or an

> erroneous or illegal imposition of property taxes...[T]he scheme is designed to accommodate a variety of types of challenges, provided that the complaining taxpayer gives the county and state officials, who are responsible for insuring adequate revenue to operate our government, notice of the alleged erroneous assessment or illegal tax and an opportunity to respond within the administrative framework."

Board of Assessment Appeals v. Benbrook, supra; see W. Ela, Some Aspects of Colorado Taxpayers' Remedies, 23 Rocky Mtn. L. Rev. 145 at 153-154 (1950).

Nevertheless, taxpayer urges us to limit the remedial application of the refund and abatement statutes to situations in which taxpayers contest illegal or erroneous assessments and to exclude cases involving

the illegal or erroneous imposition of tax levies as a result of excessive governmental conduct. Inasmuch as such a construction would render the statutory **[5]** language meaningless, we decline to do so. See Thiret v. Kautzky, 792 P.2d 801 (Colo.1990).

Our examination of the pertinent statutes establishes that county commissioners must adhere to a mandatory procedure in order to levy excess property taxes. See Citizens' Committee for Fair Property Taxation v. Warner, 127 Colo. 121, 254 P.2d 1005 (1953). Violation of the procedure constitutes an "irregularity in levying." See Stegon v. Pueblo West Metropolitan District, 198 Colo. 128, 586 P.2d 1206 (1979). Therefore, assuming the commissioners acted in derogation of the pertinent statutory guidelines by imposing taxes without adhering to the attendant procedural protections, we conclude that the tax is an illegal levy to which the refund and abate-

ment statutes apply. See Bea Kay Real Estate Corp. v. Aragon, 782 P.2d 837 (Colo. App. 1989); American Airlines v. State Board of Equalization, 749 P.2d 986 (Colo. App. 1987), rev'd on other grounds, 773 P.2d 1033 (Colo. 1989).

The refund and abatement administrative provisions afford complete and adequate remedies, Lamm v. Barber, 192 Colo. 511, 565 P.2d 538 (1977), which taxpayers must exhaust before commencing suit. Hoffman v. Colorado State Board of Assessment Appeals, 683 p.2d 783 Colo. 1984); Southern Cafeteria, Inc. v. Property tax Administrator, 677 P.2d 362 (Colo.App. 1983). And, because a taxpayer's failure to exhaust administrative remedies may not be circumvented by a declaratory judgment action, Davison v. Board of County Commissioners, 41 Colo. App. 344, 585 P.2d 315 **[6]** (1978), thus, generally a trial court is divested of subject matter jurisdiction. Leete v. Colora-

do Board of Medical Examiners, ____ P.2d __ (Colo. App. No. 89CA1906, February 14, 1991):

B.

We also disagree that the present circumstances except taxpayer from having to exhaust his administrative remedies before proceeding with judicial review.

Citing Hamilton v. Denver, 176 Colo. 6, 490 P.2d 1289 (1971), taxpayer argues that these circumstances favor judicial review because our resolution of legal questions regarding the legality of the tax levy will prevent a multiplicity of actions.

However, we have previously held that taxpayers may not justifiably avoid exhausting administrative remedies in similar circumstances. Davison v. Board of County Commissioners, supra.

Moreover in the event the tax levy is determined to be illegal upon administrative review, the board of county commissio-

ners may cure the defect by imposing a subsequent legal levy. See Colorado & Southern Ry. Co. v. Board of Commissioners, 70 Colo. 8, 196 P. 331 (1921) ("If the board can cure... the making of a totally invalid levy, by making a levy afterwards, it can remedy any defect which may have made a former levy partially invalid.").

Consequently, under circumstances in which a multiplicity of actions may be prevented without intervention of judicial review, taxpayer may not be granted relief from exhausting his [7]administrative remedies.

III.

Taxpayer next contends that the trial court erroneously denied his motion for a preliminary injunction. We disagree.

A preliminary injunction provides an extraordinary remedy which must be conditioned upon the movant's threshold showing of several criteria, including the lack of a

plain, speedy, and adequate remedy at law for the alleged injury. C.R.C.P. 65 (a); Rathke v. MacFarlane, 648 P.2d 648 (Colo. 1982). Failure of a movant to establish this precondition is fatal to injunctive relief since "[e]quity will not intervene where a plaintiff has a plain and adequate remedy at law." American Investors Life Insurance Co. v. Green Shield Plan, Inc., 145 Colo. 188, 358 P.2d 473 (1960).

Therefore, the trial court properly denied taxpayer's motion for a preliminary injunction, if only on the basis that taxpayer had failed to exhaust his adequate administrative remedies at law. See Lamm v Barber, supra. In light of the foregoing, taxpayer's contention that he possesses standing to pursue injunctive relief is academic, and the trial court's discretionary order is binding upon review. See Macleod v. Miller, 44 Colo. App. 313, 612 P.2d 1158 (1980).

IV.

Because of our disposition of taxpayer's claim on jurisdiction grounds, it is unnecessary for us to address taxpayer's other contentions of error.

[8] Taxpayer's motion for sanctions pursuant to C.A.R. 38 is without merit.

Judgment affirmed.

JUDGE CRISWELL and JUDGE PLANK concur.

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DISTRICT COURT, MESA COUNTY, COLORADO
Civil Action No. 89CV204

REPORTER'S TRANSCRIPT ON APPEAL

PAUL FERRIS,

Plaintiff,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF MESA, STATE OF COLORADO; Richard C. Pond in his capacity as member of said board and individually; Maxine Albers and R. W. Holmes in their respective capacities as members of said board and individually,

Defendants.

On Wednesday, November 8, 1989, this matter came on for hearing on plaintiff's motion for Preliminary Injunction before the Honorable DAVID A. BOTTGER, District judge.

APPEARANCES:

Plaintiff Ferris appeared in person and without counsel.

For the Defendants: Maurice Lyle Dechant, No.8948 and Earl Rhodes, No.6723.

[Record Volume III, p.109 @line 3.]

. . . I make the following findings, conclusions, and order. First of all, on the plaintiff's request for the entry of a preliminary injunction, I find the Court has jurisdiction over the parties and the subject matter. It is the plaintiff's burden of proof to establish, at a minimum, that he is likely to prevail on the merits and that if a preliminary injunction does not enter he would be irreparably harmed. I find today that the plaintiff has failed to sustain either of those burdens.

The plaintiff's contention is that the tax was levied illegally in violation of, principally, section 29-1-301, paragraph (1.2), as it applied at the time of this levy and, additionally, that it violated section 24-6-401, colloquially known as the Sunshine Act. The Court finds that the

former statute is inapplicable. In fact, the applicable statute is section 29-1-303, which applies in a situation such as this one, where a levy is sought not only for capital expenditures, but also operating expenses. I find that Plaintiff has failed to show that this statute was not observed, and in fact the evidence is that it was.

I further find that the Sunshine Act is inapplicable. The case of Bagby v. School District, cited in the **[110]**brief, makes that clear. The case of Allen v. County Commissioners, makes clear that the applicable statute is section 29-9-101, and I find that based upon the evidence that this statute was observed. That statute in part provides that meetings, well, in this case, the county commissioners shall not make final policy decisions nor shall any resolution, and so forth, be approved or adopted at any closed session. The evidence is that the resolution which the pla-

intiff attacks was adopted at an open session, a public session, for which proper notice was provided. The idea that somehow the commissioners could not, because of the illness of Commissioner Albers' husband, continue the hearing from the 22nd to 25th of November is inconsistent with the letter and the spirit of the statute in question. They provided proper notice of the 22nd hearing, November 22nd, and in fact it's my opinion they didn't need to give anybody notice that the hearing was being continued at all. They went beyond the statutory requirement and gave as much notice as they could that the hearing was being continued to November 25, 1988, and exceeded the statutory requirements. Plaintiff's suggestion to the contrary notwithstanding. a tax is not rendered illegal because he thinks there was insufficient justification for its adoption nor because he apparently thinks the money has been misapplied or not

applied consistent with the notice. In fact, the notice was for **[111]** contemplation of a six mill increase. The commissioners adopted a four mill increase. It would be difficult to imagine how any member of the public is prejudiced by the adoption of a mill levy less than what the notice warned.

There is available to the plaintiff administrative procedures for an issue like this, which he has apparently -- not apparently -- which he has not taken advantage of. These are contained in section 39-1-113 and 39-10-114, Colorado Revised Statutes. By virtue of those administrative procedures alone, he has failed to demonstrate that even if this tax is illegal that he will suffer any irreparable harm because he has these administrative avenues available. Also, the fact that he has a three-year redemption period within which time he can obtain the property if taxes weren't paid in this case -- in fact they

were -- if this tax were ultimately determined to be illegal, which, though a probability, it will not be, Mr. Ferris has available to him a simple remedy, and that is money damages from the county. He failed to show that they are inadequate or that relief cannot be obtained within the three-year redemption period.

So, for all those reasons, the request for preliminary injunction is denied based upon the case of Davison v. County Commissioners, which is 41 Colo. App. 344, a 1978 case, which bears some striking resemblance to this case. The court held that exhaustion of administrative **[112]**remedies was a condition precedent to obtaining an action to set aside tax assessments. This was couched as a declaratory judgment action, as is this one. The court found that the administrative procedures I cited were adequate, they specifically permit review if taxes have been levied reasonably or il-

legally. The plaintiff's contention that there is no administrative remedy or review for that is simply contrary to the plain language of the statute in this case. The court described these remedies as complete and adequate and said prior to commencing a suit to the illegal taxation issues the taxpayers were required to exhaust the administrative remedies detailed in those sections and went on to hold that bringing this as a declaratory judgment action would not circumvent that requirement, nor as a class action. Even if this case were a class action, which it is not, that would not excuse the plaintiff from exhausting his administrative remedies as well.

So, I am denying the request for preliminary injunction on its merits, and at this point granting Defendants' motion for judgment on the pleadings. This case is ordered dismissed. Mr. Ferris, you have the right to appeal this decision. You have 45

days from **today** to file notice of appeal, and I have a four-thirty matter that has been delayed 20 minutes, so this matter is in recess.

==========

DISTRICT COURT, MESA COUNTY COLORADO
Case No. 89 CV 204, Division I

ORDER

PAUL FERRIS,
plaintiff,
vs.
THE BOARD OF COUNTY COMMISSIONERS, et al.,
Defendants.

Dated: November 14, 1989

This case comes before me on Plaintiff's oral motion, made at the conclusion of the preliminary injunction hearing on November 8, 1989, to reconsider my granting of Defendants' Alternative Motion for Judgment on the Pleadings and/or Summary Judgment. After reviewing relevant pleadings and authorities, I deem further argument unnecessary and enter this Order.

Plaintiff's Amended Complaint does not

allege that he has exhausted his administrative remedies before bringing this action. Despite my invitation at the beginning of the November 8, 1989 hearing, Plaintiff has presented no evidence, either by affidavit or testimony, that he has exhausted his administrative remedies. Rather, Plaintiff argues that this requirement is inapplicable.

The cases cited by Plaintiff do not support this position. The taxation cases cited by Plaintiff suggest that under certain circumstances injunctive relief may be available, but they do not excuse an aggrieved taxpayer from exhausting his administrative remedies. In Baum v. City and County of Denver, 147 Colo. 104, 363 P.2d 688 (1961), the Colorado Supreme Court held that a property owner may challenge the constitutionality of a zoning ordinance without exhausting administrative remedies. Aside from the deference given by courts to

taxation statutes and ordinances, as pointed out by Defendants' authorities, this holding is inapplicable here because Plaintiff does not challenge the constitutionality of the subject ordinance by merely the procedures by which it was adopted.

In contrast, Colorado courts have repeatedly held that exhaustion of administrative remedies is a prerequisite to an action such as this one. Hoffman v. Colorado State Board of Assessment Appeals, 683 P.2d 783 (Colo. 1984); Southern Cafeteria, Inc. v. Property Tax Administrator, 677 P.2d 362, 364 (Colo. App. 1983); Davison v. County Commissioners, 41 Colo. App. 344, 347, 585 P.2d 315 (1978). In Lamm v. Barber, 192 Colo. 511, 565 P.2d 538 (1977), the Colorado Supreme Court endorsed the administrative remedies which Sections 39-1-113 and 39-10-114, 16B C.R.S., provide to Plaintiff here. As a matter of law, these statutes afford Plaintiff a plain, speedy and

adequate legal remedy, the absence of which is a prerequisite to injunctive relief.

For these reasons, Defendants' Alternative Motion for Judgment on the Pleadings and/or Summary Judgment is granted and Plaintiff's oral motion for reconsideration is denied. IT IS ORDERED that judgment enter in favor of defendants and against Plaintiff dismissing this action with prejudice.

BY THE COURT:

_____

David A. Bottger Date

District Court Judge

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DISTRICT COURT, MESA COUNTY COLORADO
Case No. 89 CV 204, Division I

ORDER

PAUL FERRIS,
plaintiff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF MESA, STATE OF COLORADO;, et al.,
Defendants.

Dated: December 8, 1989

This case comes before me on Plaintiff's

Objection and Petition for Redress with Affidavit and Plaintiff's Motion for C.R.C.P. Rule 11 Sanctions. After reviewing these motions, relevant pleadings and authorities, I deem further oral argument unnecessary and enter this Order.

Plaintiff's Objection and Petition for Redress with Affidavit indicates that Plaintiff misconstrues the Court's Order of November 14, 1989. In that Order the Court granted Defendants' Alternative Motion for Judgment on the Pleadings and/or Summary Judgment on the grounds that the Plaintiff had failed to allege or present any evidence that he had exhausted his administrative remedies before bringing this action. The deficiency in Plaintiff's Amended Complaint cannot be remedied by discovery or an evidentiary hearing, as Plaintiff requests.

At the beginning of the November 8, 1989, preliminary injunction hearing, the court

advised Plaintiff that it desired evidence on the exhaustion issue. Plaintiff neither objected nor presented any evidence that he had exhausted his administrative remedies, but merely reiterated his belief that this requirement did not apply to him. Plaintiff has had ample opportunity to present evidence on this issue but has failed to do so. In addition, he has not made the showing required by Rule 56(f), C.R.C.P., to postpone ruling on Defendant's motion.

The Court fully considered Plaintiff's Response in Opposition to Defendant's Alternative Motion for Judgment on the Pleadings and/or Summary Judgment before entering its Order of November 14, 1989. Thus, Plaintiff has not shown that he was prejudiced by the court's alleged failure to provide him an appropriate time to respond.

Plaintiff's Motion for C.R.C.P. Rule 11 Sanctions does not establish that Defendants or their counsel have violated Rule

11. The mere fact that the evidence at the November 8, 1989 hearing did not support one of the allegations in Defendants' pleadings does not establish a violation of Rule 11. If it did, virtually every non-prevailing party would be subject to Rule 11 sanctions.

For these reasons, Plaintiff's Objection and Petition for Redress with Affidavit and Plaintiff's Motion for C.R.C.P. Rule 11 Sanctions ar denied.

BY THE COURT:

_____

David A. Bottger Date

District Court Judge

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THE COURT OF APPEALS OF THE STATE OF COLORADO

Case Number 89CA2137

ORDER

PAUL FERRIS V THE BD. OF COUNTY COMM. ET AL

Upon consideration of the petition for rehearing filed by the Appellant herein, said petition is hereby DENIED. It is ordered that issuance of the Mandate hereby

be, and the same hereby is, stayed to and including June 24, 1991, provided that if a Petition for Writ of Certiorari is timely filed with the Supreme Court of the State of Colorado, the stay shall remain in effect until disposition of the within cause by the Supreme Court.

Tursi, J.

Criswell, J.

Plank, J.

Dated: May 23, 1991

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SUPREME COURT, STATE OF COLORADO
Case No. 91SC370
Certiorari to the Colorado Court of Appeals
89CA2137
Mesa County District Court 89CV204

ORDER OF THE COURT

PAUL FERRIS,
Petitioner,
v.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF MESA, STATE OF COLORADO; Richard C. Pond in his capacity as a member of said board and individually; Maxine Albers and R.W. Holmes in their respective capacities as members of said board and individually,
Respondents.

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals, and after review of the record, the briefs, and the opinion of said Court of Appeals,

IT IS THIS DAY ORDERED that said Petition for Writ of Certiorari shall be, and same hereby is, DENIED.

BY THE COURT, EN BANC, NOVEMBER 12, 1991.

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SUPREME COURT, STATE OF COLORADO
Case No. 91SC370
Certiorari to the Colorado Court of Appeals
89CA2137

ORDER OF THE COURT

PAUL FERRIS,
Petitioner,
v.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF MESA, STATE OF COLORADO; Richard C. Pond in his capacity as a member of said board and individually; Maxine Albers and R.W. Holmes in their respective capacities as members of said board and individually,
Respondents.

Upon consideration of the Petition to Reconsider, Grant, and Hear filed in the above cause, and now being sufficiently

advised in the premises,

IT IS THIS DAY ORDERED that said petition shall be, and same hereby is, STRICKEN. C.A.R. 54(b).

BY THE COURT, NOVEMBER 26, 1991.

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United States Constitution:

Article IV, Section 4: The United States shall guarantee to every State in this Union a Republican Form of government, . .

Amendment I: . . . the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment V: . . . nor shall any person . . . be deprived of life, liberty, or property without due process of law; . . .

Amendment XIV, Section 1: . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process o

law; nor deny to any person within its jurisdiction the equal protection of the laws.

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Colorado Constitution:

Article II, Section 6: Courts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property, or character; and right and justice should be administered without sale, denial or delay.

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Federal Enabling Act to Colorado State Government, Section 4. . . the said convention shall be and is hereby authorized to form a constitution and state government for said territory; provided, that the constitution shall be republican in form, . . . and not be repugnant to the constitution of the United States and the principles of the Declaration of Independence; . . .

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24-6-401. Declaration of policy. It is declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret.

24-6-402. Meetings - open to public. (1) All meetings of two or more members of any board, committee, commission, or other policy-making or rule-making body of any state agency or authority or of the general assembly, including all meetings of two or more members of the regents of the university of Colorado or any other governing board of a state institution of higher education referred to by the provisions of section 5 of article VIII of the state constitution or otherwise established by law, at which any public business is discussed or at which any formal action may be taken by such board, committee, commission, or other policy-making or rule-making body are declared to be public meetings open to the

public at all times, except as may be otherwise provided in the state constitution.

(2) Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public.

(2.1) This part 4 does not apply to any chance meeting or social gathering at which discussion of public business is not the central purpose.

(2.3) The members of a public body subject to this part 4 upon the affirmative vote of two-thirds of the entire membership of the body, may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the matters enumerated in subsection (2.5) of this section or the following matters:

(a) The purchase of property for public

purposes, or the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of the public body shall use this paragraph (a) as a subterfuge for providing covert information to prospective buyers or sellers. Governing boards of state institutions of higher education including the regents of the university of Colorado may also consider the acquisition of property as gift in an executive session, only if such executive session is requested by the donor.

(b) Conferences with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action. Governing boards of institutions of higher education including the regents of the univer-

sity of Colorado may also confer with an attorney concerning specific claims or grievances or for purposes of receiving legal advice on specific legal questions. Mere presence or participation of an attorney at an executive session of a governing board of an institution of higher education including the regents of the university of Colorado is not sufficient to satisfy the requirements of this subsection (2.3).

(c) Matters required to be kept confidential by federal law or rules or state statutes;

(d) Specialized details of security arrangements where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law;

(e) Determining positions relative to matters that may be subject to negotiations with employees or employee organizations;

developing strategy for and receiving reports on the progress of negotiation; and instructing negotiators;

(f) With respect to the board of regents of the university of Colorado, matters concerning the modification, initiation, or cessation of patient care programs at the university of Colorado hospital (including the university of Colorado psychiatric hospital), and receiving reports with regard to any of the above, if premature disclosure of information would give an unfair competitive or bargaining advantage to any person or entity.

(2.5) All meetings held by members of a public body subject to this part 4 to consider the appointment or employment of a public official or employee or the dismissal, discipline, promotion, demotion, or compensation of, or the investigation of charges or complaints against, a public official or employee shall be open to the

public unless said applicant, official, or employee requests an executive session. Governing boards of institutions of higher education including the regents of the university of Colorado may, upon their own affirmative vote, hold executive sessions to consider the matters listed in this subsection (2.5). Executive sessions may be held to review administrative actions regarding investigation of charges or complaints and attendant investigative reports against students where public disclosure could adversely affect the person or persons involved, unless the students have specifically consented to or requested the disclosure of such matters. An executive session may be held only at a regular or special meeting of the public body and only upon the affirmative vote of two-thirds of the entire membership of the body.

(2.6) Notwithstanding the provisions of subsections (2.3) and (2.5) of this sect-

ion, the state board of parole created in part 2 of article 2 of title 17, C.R.S., may proceed in executive session to consider matters connected with any parole proceedings under the jurisdiction of said board; except that no final parole decisions shall be made by said board while in executive session. Such executive session may be held only at a regular or special meeting of the state board of parole and only upon the affirmative vote of two-thirds of the membership of the board present at such meeting.

(2.7) Prior to the time the members of the public body convene in executive session, the chairman of the body shall announce the general topic of the executive session as enumerated in subsections (2.3) and (2.5) of this section.

(2.9) The limitations imposed by subsections (2.3), (2.5), and (2.7) of this section do not apply to matters which are co-

vered by section 14 of article V of the state constitution.

(3) The secretary or clerk of each board, committee, commission, or other policy-making or rule-making body shall maintain a list of persons who request notification of all meetings or of meetings when certain specified policies will be discussed and shall provide reasonable advance notification of such meetings.

(4) No resolution, rule, regulation, ordinance, or formal action of a board, committee, commission, or other policy-making or rule-making body shall be valid unless taken or made at a meeting that meets the requirements of subsections (1) and (2) of this section.

(5) The minutes of a meeting of any such board, committee, commission, or other policy-making or rule-making body shall be promptly recorded, and such records shall be open to public inspection. The minutes

of executive sessions authorized under subsections (2.3) and (2.5) of this section need only reflect the general subject matter of discussions.

(6) The courts of record of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

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PART 3 OF ARTICLE 1, TITLE 29, C.R.S.

29-1-301. Levies reduced - limitation.

(1) Effective January 1, 1988, all statutory tax levies for collection in 1989 and thereafter when applied to the total valuation for assessment of the state, each of the counties, cities, and towns not chartered as home rule except as provided in this subsection (1), and each of the fire, sanitation, irrigation, drainage, conservancy, and other special districts established by law shall be so reduced as

to prohibit the levying of a greater amount of revenue than was levied in the preceding year plus five and one-half percent, except to provide for the payment of bonds and interest thereon, for the payment of any contractual obligation which has been approved by a majority of the qualified electors of the taxing entity or for the payment of capital expenditures as provided in subsection (1.2) of this section. In computing the limit, the following shall be excluded: The increased valuation for assessment attributable to annexation or inclusion of additional land, the improvements thereon, and personal property connected therewith within the taxing entity for the preceding year; the increased valuation for assessment attributable to new construction and personal property connected therewith within the taxing entity for the preceding year; the increased valuation for assessment attributable to in-

creased volume of production for the preceding year by a producing mine if said mine is wholly or partially within the taxing entity and if said increase in volume of production causes an increase in the level of services provided by the taxing entity; and increased valuation for assessment attributable to previously legally exempt federal property which becomes taxable if such property causes an increase in the level of services provided by the taxing entity.

(1.2) (a) The limitation provided for in subsection (1) of this section shall not apply for the purpose of raising revenue to pay for capital expenditures. Such revenue shall not be included in determining the limitation in following years. For the purposes of this paragraph (a) "capital expenditure" means an expenditure made by a taxing entity for long-term additions or betterments, which expenditure, under gene-

rally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance. This paragraph (a) shall apply to counties, cities, and towns.

(b) If a county imposes an increased mill levy pursuant to paragraph (a) of this subsection (1.2) for a one-time, nonrecurring expenditure for a county road or bridge capital project or county road or bridge capital asset, the county may also request that the division of local government waive application of the provisions of section 43-2-202 (2), C.R.S., to the revenue received from that increased levy. In that event, said division shall notify the governing body of each municipality in the county of the request and of the period of time, not less than twenty days, during which the division will receive comment on the request. In considering whether to waive application of said section 43-2-202

(2), the division shall consider, among other relevant matters, the benefit of the project or asset to the municipalities in the county, the need for the project or asset, and alternative methods of and timing for financing the project or asset. No approval for such waiver shall be granted or continued until the division determines that the property tax revenues in the road and bridge fund, excluding the revenues from such increased levy, for the year for which the increase is imposed bear at least the same proportion to all countywide property tax revenues as in the immediate prior year budget.

(c) Any decision to exceed the limitation for the purpose of raising revenue for capital expenditures pursuant to this subsection (1.2) shall conform with the advertising and public hearing requirements of this paragraph (c). No taxing entity may exceed the limitation to raise such

revenue unless the governing board of such taxing entity has advertised its intention to do so and unless such excess has been approved by at least two-thirds of the members of such governing board voting at a public hearing. The advertisement specified in this paragraph (c) shall be in a newspaper published within the taxing entity, and, it there is no newspaper published within the taxing entity, then by publication in a newspaper published within the county which has general circulation within the taxing entity and shall appear twice therein. The second such appearance shall not be more than eight days prior to the date upon which the public hearing is to be held. The advertisement shall be no less than one-quarter page in size and shall have a caption in capital letters in a type no smaller than twenty-four-point stating "a public hearing shall be held to consider increasing your property taxes for

capital expenditures". Such advertisement shall be in a type no smaller than eighteen-point and shall not be placed in that portion of the newspaper in which legal notices and classified advertisements appear. Such advertisement shall state that such board will hold a public hearing, at a time and place fixed in the advertisement, and the purpose of such hearing and shall apprise the general public of its right to attend the hearing and make comments regarding the proposed matter. Such advertisement shall also state what the property taxes would be without such excess and what the property taxes will be with such excess and the percentage difference between such property taxes. Any public hearing held pursuant to this paragraph (c) shall be open to the general public. An opportunity shall be provided for all persons to present oral testimony within such reasonable time limits as shall be set by

the board conducting the hearing. Prior to the conclusion of the public hearing, the governing board of the taxing entity shall publicly announce the percent by which the mill levy required to raise such excess exceeds the mill levy computed without such excess.

(1.3) (a) Effective January 1, 1988, if a taxing entity which is enumerated in subsection (1) of this section does not impose in 1987 or any given year thereafter the maximum levy that it could impose under such subsection (1), or under section 29-1-301.1 (1) with respect to levies imposed in 1987 for collection in 1988, the taxing entity may impose, in the year immediately following, a levy sufficient to levy the amount of revenue which could have been levied in the year in which it did not impose the maximum levy plus five and one-half percent. If, for two or more consecutive years subsequent to December 31, 1986,

a taxing entity does not impose the maximum levy that it could impose under subsection (1) of this section, or under section 29-1-301.1 (1) with respect to levies imposed in 1987 for collection in 1988, the taxing entity may impose in any year a levy sufficient to levy the amount of revenue which was raised in the most recent year in which the maximum levy was imposed plus five and one-half percent for each intervening year, so that the application of said percentage will be cumulative and the result will be as if the taxing entity had levied the full amount it could have levied under subsection (1) of this section, or under section 29-1-301.1 (1) with respect to levies imposed in 1987 for collection in 1988, for each intervening year. Nothing in this paragraph (a) shall allow the cumulation of allowable percentage increases for levies imposed prior to 1987 for collection in 1988, or for levies imposed prior to 1991

for collection in 1992.

(b) Beginning January 1, 1990, the division of local government shall submit an annual report to the general assembly on the use of the cumulation allowed under paragraph (a) of this subsection(1.3) and the impact of such cumulation on taxpayers.

(c) This subsection (1.3) is repealed, effective June 30, 1991.

(1.5) All property tax revenues, except such revenues as are exempted in subsection (1) of this section, raised from any property tax levied by a taxing entity which is subject to this section, shall be combined for the purpose of determining the total amount of property tax revenue which the taxing entity is allowed to raise subject to the limitation imposed by this section. The limitation shall be applied to such aggregate property tax revenues. However, such aggregate amount shall not include any property tax revenue which is

raised by or on behalf of a district, authority, or area which is within but is not composed of the entire taxing entity and which is raised by a tax upon only property within such district, authority, or area; such property tax revenue is subject to a limitation independent of the limitation which is applied to the taxing entity within which such district, authority, or area is located. No statute establishing a set mill levy or establishing a maximum mill levy or authorizing an additional mill levy for a special purpose shall be construed as authorizing the taxing entity to exceed the limitation imposed by this section.

(1.7) For property tax years commencing on or after January 1, 1988, any taxing entity which is subject to the provisions of this section shall not levy any property tax for purposes which are exempt from the limitation imposed by subsection (1) of this section in an amount which is greater

than the amount of revenues required to be raised for such purposes during any year as specified by the provisions of any contract entered into by such taxing entity or any schedule of payments established for the payment of any obligation incurred by such taxing entity. Where bonds, contractual obligations, or capital expenditures have been approved, but actual revenues required for such purposes are not known at the time the levy is set, the taxing entity may base its levy on the estimated revenues which are so required for one year only and in subsequent years the levy shall be based on the actual revenues which are so required. Nothing in this subsection (1.7) shall preclude refunding of any obligation or contract.

(2) If an increase over said limitation is allowed by the division of local government in the department of local affairs or voted by the electors of a taxing entity

under the provisions of section 29-1-302, the increased revenue resulting therefrom shall be included in determining the limitation in the following year. However, any portion of such increased revenue which is allowed as a capital expenditure pursuant to section 29-1-302 (1.5) shall not be included in determining the limitation in the following year.

(3) The limitations of this part 3 shall apply to home rule counties unless provisions are included in the county home rule charter which are, as determined by the division of local government, equal to or more restrictive than the provisions of this part 3.

(4) In the event of a consolidation or merger, in whole or in part, of two or more political subdivisions or taxing entities, the surviving entity or the entity assuming service responsibilities shall use a direct proportion of the combined entities' prior

year property tax revenues as the base for computing the limitation in the year first succeeding such consolation or merger.

(5) (a) Notwithstanding any law to the contrary, in addition to any property tax which is levied in compliance with the limitation imposed by subsection (1) of this section, any county may levy an additional amount of property tax in 1988 for collection in 1989 and in 1989 for collection in 1990 which is equal to one-fourth of the one percent of the total amount of property tax which may be levied by such county in each said year as specified in subsection (1) of this section. Such additional tax shall not be subject to the limitation imposed by subsection (1) of this section. Any property tax levied pursuant to the provisions of this paragraph (a) shall be included in the total amount of revenue levied in said year for purposes of computing the limit for the succeeding year pur-

suant to the provisions of subsection (1) of this section.

(b) Such additional tax levied pursuant to the provisions of paragraph (a) of this subsection (5) shall be used by such county in the 1989 and 1990 budget years for the operation and improvement of the office of the assessor of such county, including, by not limited to, general operating expenses, additional staff, and acquisition of additional and improved equipment and technology.

(c) This subsection (5) is repealed, January 1, 1991.

(6) Where a taxing entity exceeds the limitation imposed by subsection (1) of this section during any year, the division of local government shall order a reduction in the authorized revenue of the taxing entity for the subsequent year in an amount which offsets the excess revenues levied in the preceding year. Such order shall be

preceded by notice to the taxing entity of the proposed order and an opportunity for the taxing entity to respond prior to issuance of the order.

29-1-302. Increased levy - submitted to people at election. (1) If the board of any special district authorized to levy a tax or any officer charged with the duty of levying a tax in any special district is of the opinion that the amount of tax limited by section 29-1-301 will be insufficient for the needs of such special district for the current year, the question of an increased levy may be submitted to the division of local government in the department of local affairs, and it is the duty of said division to consider the public awareness of the question, the public support therefor, and the public objection thereto and to examine the needs of such special district and ascertain from such examination the financial condition thereof, and, if in

the opinion of the division such special district is in need of additional funds, the said division may grant an increased levy for such special district is in need of additional funds, the said division may grant an increased levy for such special district above the limits specified in this part 3, and such special district is authorized to make such excess levy. The division of local government shall not under any circumstance grant an increased levy based upon increased valuation for assessment purposes from reappraisals. As used in this section, "special district" means any district organized pursuant to law, except school districts operating pursuant to title 22, C.R.S., which is authorized to levy and ad valorem tax on property within its boundaries, and the term includes, but is not limited to, districts organized under article 20 of title 30, C.R.S., articles 25 and 35 of title 31, C.R.S., and

titles 32 and 37, C.R.S.

(1.5) (a) The general assembly recognizes the need for periodic increased levies in order to finance capital projects and purchases of capital assets which are a one-time, nonrecurring expenditure. It is the intent of the general assembly that the division of local government may grant an increased levy for such expenditures if, in its opinion, a special district, to which section 29-1-301 (1.2) (a) does not apply, is in need of additional funds for such expenditures. Any increased levy granted by the division of local government in a given year which is designated by it as a capital expenditure shall not be included in determining the limitation in the following year. If the division is of the opinion that such additional funds will be needed for two or more years after reviewing the long-range plan of the special district concerning the expenditure of such

funds, it may grant an increased levy, and such increased levy shall automatically be allowed for each year during which such additional funds will be needed. During such years, the increased levy for each year shall not be included in determining the limitation in the following year.

(2) (a) In case the division of local government, after consideration of the public awareness of the question, the public support therefor, and the public objection thereto, refuses or fails within ten days after submission to it of an adopted budget to grant an increased levy to a special district pursuant to subsection (1) or (1.5) of this section, the question may be submitted to the qualified electors of said district at a general or special election called for the purpose and in the manner provided by law for calling special elections in such special district.

(3) Due notice of submission of the que-

stion of whether to grant the increased levy shall be given by the appropriate official designated by law starting at least thirty days in advance of the date set for the general or special election by publication in a newspaper published within the taxing entity, and, if there is no newspaper published within the taxing entity, then by publication in a newspaper published within the county which has general circulation within the taxing entity. The notice required by this subsection (3) shall appear at least three times in such newspaper, shall not be less than ten column inches in size, and shall be placed once in that portion of the newspaper in which legal notices and classified advertisements appear and twice in that portion of the newspaper in which legal notices and classified advertisements do not appear but shall otherwise be subject to the rates established in section 24-70-107, C.R.S.

If a majority of the votes cast at any such election is in favor of the increased levy as named in said election notice, then the officers charged with levying taxes may make such increased levy for the year voted upon.

29-1-303. Revenue-raising limitation exemption - public disclosure of tax levy.

(1) (a) Any county, city and county, city, or town, referred to in this section as a "taxing entity", which for any budget year adopts the procedure set forth in this section for public disclosure of the property tax levy to be imposed and which prior to the adoption of such procedure has complied with the provisions set forth in paragraph (b) of this subsection (1) shall be exempt from the limitation imposed under the provisions of section 29-1-301 for such budget year. The governing board of such taxing entity shall adopt such procedure by resolution within a reasonable amount of

time to permit the county assessor to perform the duties set forth in paragraph (b) of subsection (2) of this section. The governing board shall notify the division of local government of the adoption of such resolution.

(b) No taxing entity may adopt the procedure set forth in this section for public disclosure of the property tax levy to be imposed unless the governing board of such taxing entity has advertised its intention to adopt such procedure and unless the adoption of such procedure has been approved by at least two-thirds of the members of such governing board voting at a public hearing. The advertisement specified in this paragraph (b) shall be in a newspaper published within the taxing entity, and, if there is no newspaper published within the taxing entity, then by publication in a newspaper published within the county which has general circulation within the taxing

entity and shall appear twice therein. The second such appearance shall not be more than eight day prior to the date upon which the public hearing is to be held. The advertisement shall be no less than one-quarter page in size and shall have a caption in capital letters in a type no smaller than twenty-four-point stating "a public hearing shall be held to consider adoption of a taxing procedure to increase your property taxes". Such advertisement shall be in a type no smaller than eighteen-point and shall not be placed in that portion of the newspaper in which legal notices and classified advertisements appear. Such advertisement shall state that such board will hold a public hearing, at a time and place fixed in the advertisement, and the purpose of such hearing and shall apprise the general public of its right to attend the hearing and make comments regarding the proposed matter.

(2) (a) No later than September 15 of the year prior to the budget year under consideration, the county assessor shall certify the total valuation for assessment of all taxable property located within the territorial limits of such taxing entity.

(b) No later than October 1 of the year prior to the budget year under consideration, the county assessor of the county in which is located a taxing entity adopting the public disclosure provisions of this section shall certify the following to such taxing entity: The mill levy which when applied to such valuation for assessment, exclusive of the increased valuation for assessment attributable to annexation or inclusion of additional land, the improvements thereon, and personal property connected therewith within the taxing entity for the preceding year, or attributable to increased volume of production for the preceding year by a producing mine if said

mine is wholly or partially within the taxing entity and if such increase in volume of production causes an increase in the level of services provided by the taxing entity, or attributable to previously legally exempt federal property which becomes taxable, will raise the same property tax revenue as was raised the preceding year. For the purposes of this section, such mill levy shall be known as the "certified mill levy".

(3) Any taxing entity adopting the public disclosure provisions of this section which proposes to impose a mill levy in excess of the certified mill levy computed pursuant to subsection (2) of this section shall hold a public hearing on such increased mill levy prior to imposing such increased mill levy. No such taxing entity may impose a mill levy which is in excess of such certified mill levy until a resolution has been approved, at a public hear-

ing, by the governing board of the taxing entity, which resolution shall be approved by such board according to the procedure set forth in this section.

(4) The governing board of the taxing entity adopting the public disclosure provisions of this section shall advertise the intent of the taxing entity to exceed the certified mill levy in a newspaper published within the taxing entity, and, if there is no newspaper published within the taxing entity, then by publication in a newspaper published within the county which has general circulation within the taxing entity. Such advertisement shall appear twice, and the second such appearance shall not be more than eight days prior to the date upon which the public hearing is to be held. The advertisement shall be no less than one-quarter page in size and shall have a caption in capital letters in a type no smaller than twenty-four-point stating "a

public hearing shall be held on a proposal to increase your property taxes", and the advertisement shall be in a type no smaller than eighteen point and shall not be placed in that portion of the newspaper in which legal notices and classified advertisements appear. Such advertisement shall state that such board will hold a public hearing, at a time and place fixed in the advertisement, for the purpose of considering an increased mill levy and explaining the reasons for such increase and shall apprise the general public of its right to attend the hearing and make comments regarding the proposed increase. The advertisement shall set forth the amount of the budget and the amount of the property tax revenue for the prior budget year, the current budget year, and the proposed budget year and, in addition, shall set forth the percentage increases between such budget years.

(5) Any public hearing held pursuant to

this section shall be open to the general public. An opportunity shall be provided for all persons to present oral testimony within such reasonable time limits as shall be set by the board conducting the hearing.

(c) Prior to the conclusion of the public hearing or at a subsequent public hearing after advertising such hearing as provided in subsection (4) of this section, the governing board of the taxing entity shall determine the mill levy to be imposed and publicly announce the percent, if any, by which the adopted mill levy exceeds the certified mill levy computed pursuant to subsection (2) of this section. Prior to the conclusion of the hearing at which such determination and announcement are made, such board shall adopt a resolution setting such mill levy. The mill levy set in the resolution shall be the mill levy which is certified pursuant to section 39-5-128, C.R.S.

(7) If, after the adoption of the resolution pursuant to subsection (6) of this section, changes occur in the valuation for assessment, the governing board of the taxing entity shall make such adjustment in the mill levy set in such resolution as is necessity in order to raise the approved amount of revenue.

(8) This section shall not apply to special districts or any other form of district, authority, or area whether or not created by the governing body of a county, city and county, city, or town or by elector, taxpayer, or property owner approval or petition, such as, law enforcement authorities, disposal districts, county public improvement districts, county recreation districts, municipal sewer districts, urban renewal authorities, and downtown development authorities. This section shall not apply to property tax revenue which is raised by or on behalf of any such district,

authority, or area, unless the amount of such property tax revenue raised on behalf of any such district, authority, or area is determined and raised by the governing body of a taxing entity as defined in subsection (1) of this section and is separately listed in the notice required by subsection (4) of this section.

(10) This section is repealed, effective January 1, 1990.

29-1-304. Funding for state-mandated programs. (1) Every action by the general assembly which mandates a new program or the expansion of an existing program subsequent to July 1, 1981, upon a unit of local government shall either.

(a) Provide sufficient state general fund appropriations to meet the cost thereof; or

(b) Provide for a local source of revenue to meet the cost thereof.

(2) Nothing in this section shall be

construed to supersede any revenue-raising or spending limitation imposed by this part 3 or any other provision of law on the state or any unit of local government nor to require the funding of any program in excess of appropriations made therefor by the general assembly or the unit of local government responsible for such funding.

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29-9-101. Public meetings. (1) All meetings of any board, commission, committee, or authority of a political subdivision of the state supported by law in its activities in whole or in part with public funds are declared to be public meetings and open to the public at all times; but such groups, by majority consent of members present, may go into executive session for consideration of documents or testimony given in confidence but shall not make final policy decisions, not shall any resolution, rule, ordinance, regulation, or

formal action or any action approving a contract or calling for the payment of money be adopted or approved at any session which is closed to the general public.

(2) Any action taken contrary to the provisions of subsection (1) of this section shall be null and void and without force or effect.

(3) Notwithstanding any provision of subsection (1) of this section, a board of education of a public school district and the governing body of any municipality, county, or special district may meet in executive session to determine its position relative to issues that may be subject to negotiation, to receive reports on negotiations progress and status, to develop strategy, and to instruct its negotiators.

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39-1-113. Abatement and refund of taxes.

(1) No abatement or refund of taxes as provided for in section 39-10-114, shall be

made by the board of county commissioners unless a hearing is had thereon, at which hearing the assessor shall have the opportunity to be present.

(2) Whenever any abatement or refund in an amount of five hundred dollars or less is recommended by the board of county commissioners, the board shall order the abatement of taxes pro rata for all levies applicable to such property, or, in the case of a refund, the board of county commissioners shall order the refund of taxes pro rata by all taxing jurisdictions receiving payment thereof.

(3) Whenever any abatement or refund in an amount in excess of five hundred dollars is recommended by the board of county commissioners, an application therefor, reciting the amount of such abatement or refund and the grounds upon which it should be allowed, shall be submitted to the administrator for his review pursuant to sec-

tion 39-2-116. If an application is approved, the board of county commissioners shall order the abatement of taxes pro rata for all levies applicable to such property, or, in the case of a refund, the board of county commissioners shall order the refund of taxes pro rata by all taxing jurisdictions receiving payment thereof.

(4) In no case shall an abatement or refund of taxes be made more than six years after the taxes were due.

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39-10-114. Abatement, cancellation of taxes. (1) (a) (I) (A) If taxes have been levied erroneously or illegally, whether due to erroneous valuation for assessment, irregularity in levying, or clerical error, the treasurer shall report the amount thereof to the board of county commissioners, which shall proceed to abate such taxes in the manner provided by law. If such taxes have been collected by the treasurer, the

board of county commissioners shall authorize refund of the same in the manner provided by law. However, except as otherwise provided in this sub-subparagraph (A), in no case shall an abatement or refund of taxes be made more than six years after the taxes were due. No abatement or refund of taxes based upon the ground of errors in valuation shall be made for taxes levied prior to January 1, 1988; except that this provision shall not apply to any valuation which is the subject of an appeal made pursuant to section 39-8-108 which, on May 23, 1988, is pending or upon which a final order or judgment has been issued. On or after January 1, 1990, in no case shall an abatement or refund of taxes be made unless a petition for abatement or refund is filed within one year of the date upon which the taxes were due or within one year of the issuance of a final order or judgment in an appeal filed pursuant to section 39-8-108,

whichever is later. For purposes of this sub-subparagraph (A), "clerical error" shall include, by shall not be limited to, any clerical error made by a taxpayer in completing personal property schedules pursuant to the provisions of article 5 of this title.

(B) The assessor shall certify the proportional amount of the total amount of abatements and refunds granted pursuant to the provisions of this section to the appropriate taxing entities at the same time that the certification of valuation for assessment is made pursuant to the provisions of section 39-5-128. Any taxing entity may adjust the amount of its tax levy authorized pursuant to the provisions of section 29-1-301, C.R.S., by an additional amount which does not exceed the proportional share of the total amount of abatements and refunds made pursuant to the provisions of this section. After calculating

the amount of property tax revenues necessary to satisfy the requirements of the "Public School Finance Act of 1988", article 53 of title 22, C.R.S., any school district shall add an amount equal to the proportional share of the total amount of abatements and refunds granted pursuant to the provisions of this section prior to the setting of the mill levy for such school district. Any additional amount added pursuant to the provisions of this subsection (3) shall not be included in the total amount of revenue levied in said year for the purposes of computing the limit for the succeeding year pursuant to the provisions of section 29-1-301, C.R.S. Where a final determination is made granting an abatement or refund pursuant to the provisions of this section after the certification of tax levies in any given year, the abatement or refund granted shall be payable upon payment of property taxes for the property tax

year immediately following said final determination. For the purposes of this sub-subparagraph (B), a taxing entity's proportional share of the total amount of abatements and refunds granted shall be based upon the amount of tax levied by a taxing entity on such real property in proportion to the total amount of tax levied on such real property by such taxing entities.

(C) The change or adjustment of any ratio of valuation for assessment for residential property pursuant to the provisions of section 39-1-104.2 shall not constitute grounds for abatement of taxes as provided in sub-subparagraph (A) of this sub-paragraph (I).

(b) Any taxes illegally or erroneously levied and collected, and penalty interest thereon, shall be refunded pursuant to this section, together with refund interest at the same rate as that provided for penalty interest set forth in section 39-10-104.

Said refund interest shall accrue only from the date payment of taxes and penalty interest thereon was received by the treasurer

(2) (a) Any taxes levied on personal property which are determined to be uncollectible after a period of six tears after the date of their becoming delinquent may be cancelled by the board of county commissioners; except that taxes levied on any mobile home which after diligent search by the treasurer are determined to be uncollectible due to removal of the mobile home from the county or other valid reason may be referred to the board of county commissioners for deletion from the tax rolls after a period of one year.

(b) When any real property has been stricken off to a county by virtue of a tax sale and there has been no transfer by the county of a certificate of purchase thereon, the taxes on such property may be dete-

rmined to be uncollectible after a period of six years from the date of becoming delinquent, and they may be cancelled by the board of county commissioners. Such cancellation shall not affect the rights of the county under Article 11 of this title to subsequently transfer any tax sale certificate nor its right to receive a tax deed and to exercise its rights thereunder with respect to such property.

(3) The treasurer shall keep a complete record of all taxes abated, refunded, or determined to be uncollectible and cancelled by the board of county commissioners as provided in subsection (2) of this section. The treasurer shall file an annual report with the administrator by March 1 of each year, which shall include all taxes abated, refunded, or determined to be uncollectible and cancelled. Such report shall include the name of each owner of taxable property granted such abatement, refund, or cancel-

lation of property taxes, the amount of property taxes abated, refunded, or cancelled, and the date such abatement, refund, or cancellation was granted.